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AD HOC INTERGOVERNMENTAL WORKING GROUP
OF EXPERTS ESTABLISHED PURSUANT TO
GENERAL ASSEMBLY RESOLUTION 48/218
Second session
13-17 June 1994

DRAFT REPORT OF THE AD HOC INTERGOVERNMENTAL WORKING GROUP OF EXPERTS ESTABLISHED PURSUANT TO GENERAL ASSEMBLY RESOLUTION 48/218 ON THE WORK OF ITS SECOND SESSION

I. INTRODUCTION

1. The second session of the Ad Hoc Intergovernmental Working Group of Experts established pursuant to General Assembly resolution 48/218 of 23 December 1993 was held at United Nations Headquarters in New York from 13 to 17 June 1994.

II. ORGANIZATIONAL MATTERS

A. Attendance

2. The meeting was attended by experts from 24 Member States and representatives of invited United Nations bodies and offices. The list of participants is contained in annex I to the present report.

B. Organization of work

3. The Working Group considered the issues contained in paragraph 18 of the report of its first session (A/AC.243/1994/L.5) which it had identified at its first session as requiring further consideration. The Working Group had before it the schedule of work contained in a conference room paper (A/AC.248/1994/CRP.2).

4. The Working Group also decided to conduct informal consultations under the chairmanship of the two Vice-Presidents on the rules, procedures and mechanisms

in the financial area, on one hand, and on the rules, procedures and mechanisms in the disciplinary and administrative areas, on the other.

C. Documentation

5. In addition to the documents which were transmitted to the experts at their first session, the Working Group had before it a document entitled "Observations regarding measures to reduce alleged cases of fraud", submitted by Mr. Lelong, the expert representing the Government of France (A/AC.243/1994/L.6).

III. SUBSTANTIVE MATTERS

6. The Working Group agreed that at its first session it had conducted a general discussion of its mandate and had identified areas which required further review. Accordingly the Working Group decided to devote the second session to reviewing specific areas and arriving at certain conclusions. It was hoped that on the basis of the conclusions thus arrived at specific recommendations would emerge which would be transmitted to the General Assembly in fulfilment of its mandate, contained in resolution 48/218.

A. Magnitude of the problem and frauds committed from outside and inside the United Nations

7. At the outset of the deliberations on the magnitude of the problem, the representative of the Secretariat provided the Working Group with a breakdown of the cases of fraud for the biennium 1991-1992 and an indication of the dollar value of those cases.

8. Some experts expressed the view that the magnitude of the problem was not adequately conveyed by the statistics which were presented. It was felt that such data should have been supplemented with an in-depth description of cases in order to present a more complete picture. Moreover, while many experts wished to have an indication in dollar terms, what was presented was insufficient to enable an accurate assessment of the magnitude of the problem. Despite that difficulty the Working Group was of the view that the matter of any loss of the resources and injury to the image of the Organization was of such importance that it required serious examination.

9. Many experts expressed concern over losses, in some cases involving large sums of money, which the Organization had suffered in peace-keeping missions. It was not clear whether a mechanism existed which would reduce risks when handling large sums of cash. In cases where the fraudulent acts were committed by employees of Governments of Member States assigned to the United Nations, and yet not under the complete authority of the Secretary-General, one expert wondered whether such Governments should not be held responsible for the actions of their employees. One expert concluded that two kinds of proposals could be made in this regard. One proposal would deal with specific action which would be taken, and the other would identify areas, systems, rules and regulations, etc., which would require further review. In this connection some experts

stressed the need for conducting a more in-depth review of the existing systems prior to the submission of recommendations.

B. Review of disciplinary mechanisms

10. The Working Group took note of the detailed description by the Secretariat of the disciplinary mechanisms available to the Secretary-General to deal with cases of fraud and presumptive fraud. In addition, information was provided by the Secretariat on the procedures which were followed once a case of presumptive fraud was reported. The experts noted that the current disciplinary system did not distinguish cases of fraud from other cases of misconduct. The time it took to dispose of any one disciplinary case ranged from 5 weeks at the shortest, to 15 months at the longest, the average period being 6 weeks.

11. There was a general feeling that the process of dealing with cases of fraud from discovery to settlement was overly lengthy. It was questionable whether an efficient and expeditious treatment of fraud cases could be achieved under that system. Some experts wished to know what practical difficulties the Secretary-General had encountered in applying the disciplinary procedures. Some others enquired whether the Secretary-General had means of identifying how the fraud had occurred and of studying the causes and consequences of the fraud. Some wished to know whether disciplinary action would be taken even in those cases where intent to defraud had not been established.

12. Experts took note of a proposal which had been made by the Secretariat by which the Secretary-General would have the right to file suits before the United Nations Administrative Tribunal against staff alleged to have committed fraud against the Organization. While it was generally considered to be a good suggestion, one expert none the less had several questions regarding the implications of such a decision. Some wished to know what law would be applied by the Administrative Tribunal in those cases. Some wondered what action would be required and who would implement that action.

13. The composition of the Joint Disciplinary Committee, requiring participation of representatives of the staff, was noted along with the problems which emanated from that structure. It was further noted that all members of the Joint Disciplinary Committee were staff who volunteered their services while at the same time performing full-time their regular functions. One expert queried the necessity for continuing with the concept of "judgement by peers", while another wondered whether the Secretary-General had given consideration to upgrading the Joint Appeals Board to a court of first instance. A question was also raised as to whether the Secretary-General had filed civil suits against staff members before national courts in order to recover lost funds, and if so whether problems involving privileges and immunities had been encountered.

14. The experts were informed that if the General Assembly should decide to grant the Secretary-General access to the Administrative Tribunal, an amendment to the statute of the Tribunal would be required. Once that was achieved the Tribunal would apply the internal rules and regulations of the United Nations. However, it was explained that the United Nations had not found it cost-effective to pursue civil cases against staff and former staff members in

national courts. However, where the Organization itself was being sued, and the Organization chose to assert its privileges and immunities, arbitration would be proposed as an alternative.

15. The Working Group also discussed the institution of the ombudsman. The representative of the Secretariat informed the Working Group that although that matter was not a new one consultations were continuing, and therefore no definitive position could be presented at this time. However, it was noted that in the concept under consideration the ombudsman would be closer to a mediator or conciliator, rather than a legal institution, as it was understood in the Nordic countries.

C. Review of existing rules, procedures and mechanisms dealing with financial irregularities

16. The Working Group, having studied the Financial Rules and Regulations, concluded that they needed to be updated in many important areas in order to meet the changing circumstances. Clarification was required in many areas, including procedures for delegation of authority to certifying and approving officers, their appointment and its duration of office, as well as publication of the panel of certifying and approving officers. Many experts wished to receive information regarding the nature of internal financial control mechanisms, in particular for dealing with procurement and contracting. While the Working Group took note of the authorized threshold for expenditures, the information received did not clarify the procedures followed with regard to contracts falling within the authorized amount. In that connection the Working Group expressed concern that it had not been provided with requested clarification on the role of the requisitioning, approving and certifying officers, especially as regards their actions before and after a fraud was detected. Experts wished to know whether a system was in place for the regular review of documentation on procurement in use at the field level. The powers of the Committee on Contracts also required clarification. It was unclear whether the Committee on Contracts could reject proposed contracts, and what responsibility the members of the Committee bore with regard to contracts which they approved. Some experts wished to receive information regarding the procedures to be followed when liquidating peace-keeping missions.

17. In response it was stated that the approving officers were selected from the staff in the Office of Programme Planning, Budget and Finance, while the certifying officers were appointed by the Controller on the recommendation of the head of the department or office. There was a system of internal control known as "pre-auditing" by the staff of the unit themselves, which was not to be confused with the role of the internal audit. Concerning the procedures followed by the Committee on Contracts, the Working Group received from a representative of the Secretariat a detailed description of those procedures and mechanisms. The Composition of the Committee on Contracts at Headquarters and its mandate were also described.

D. Recovery

18. The issue of recovery of losses incurred by the United Nations was also deliberated by the Working Group. If the Organization was to avoid a total loss in a given case, the Secretary-General had to have effective means of recovering moneys. The Working Group noted with concern that there were cases where the Secretary-General had been unable to recover funds for a number of reasons. Among these were the departure of the staff member from the jurisdiction where the fraud had been committed, and the insufficient amount of money accessible by the Secretary-General for recovery. Questions were also raised as to what means of recovery existed for the Secretary-General in cases where fraudulent intent did not exist, yet loss had occurred either through misapplication or non-observance of the rules and procedures or outright negligence.

19. Various provisions within the Financial Rules and Regulations and the Staff Rules and Regulations existed which would enable recovery. However, the Working Group had not received sufficient information to enable it to determine the adequacy of those provisions. Therefore there was a need to clarify, for example, the use of the provisions on surcharge, e.g., how often they were invoked, and whether they were was applied in cases of fraud.

20. Among some of the ideas presented was the proposal that the Working Group might examine the possibility of effecting recovery from the pension benefits of the staff member involved in fraud. It was also suggested that consideration should be given to the establishment of a body dealing strictly with financial irregularities. In addition it was considered necessary to encourage the Secretary-General to sue persons engaged in defrauding the Organization in national courts. This process would be facilitated if States Members of the United Nations would enact legislation making it an offence under their national laws to defraud the United Nations.

IV. ARRANGEMENTS FOR THE THIRD SESSION

A. Issues to be considered

21. The Working Group decided to consider proposed recommendations which are contained in annex II to the present report.

B. Date of the next session

22. The Working Group decided to hold its third session at United Nations Headquarters from 6 to 9 September 1994.